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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20540

**FILE:** B-190173

**DATE:** February 10, 1978

**MATTER OF:** West Electronics, Inc.

**DIGEST:**

1. Absent bad faith or fraud, not present here, GAO will not review agency failure to change initial determination of nonresponsibility upon reconsideration after denial of a COC where the protester's new information appears to have been fully considered.
2. No useful purpose would be served by consideration of other bases of protest rendered moot by determination of nonresponsibility which renders protester ineligible for award in any event.

West Electronics, Incorporated (West), protests the award of a contract to Entron, Incorporated (Entron), under request for proposals (RFP) No. 09603-77-R-0822 issued by the Warner Robins Air Logistics Center.

The RFP in question was issued on March 21, 1977, as a total small business set-aside for the purchase of missile launcher power supplies with sources limited to West and Entron. West submitted the lower-priced proposal. On May 24, 1977, the contracting officer determined West to be nonresponsible as the result of a preaward survey and referred the matter to the Small Business Administration (SBA) for consideration under certificate of competency (COC) procedures. Both competitors extended their acceptance periods in early June with Entron lowering its offered price. On June 27, 1977, the SBA declined to issue a COC in this instance. West requested a review of the COC denial and furnished new financial information to the contracting officer which was determined to warrant a resurvey of West's financial capability. The offerors were again requested to and did extend their acceptance periods during the first week of August; West raised its offered price on this extension above Entron's price.

B-190173

The resurvey report, dated August 8, 1977, recommended with one dissent that award not be made to West and the contracting officer's determination of nonresponsibility was not changed. The contract was awarded to Entron on September 6, 1977.

West contends that (1) Entron, by virtue of its incumbency on another contract to furnish a similar item, had advance knowledge of possible modifications to this procurement which enabled Entron to lower its offered price at the time of the first extension in June 1977 and (2) that the specifications were unclear regarding the type of overload protection required in the power supply, causing West to raise its price on the second extension in response to a clarification of this requirement which differed from West's own prior interpretation. The Air Force, although addressing the substance of West's allegations, has taken the position that award to West was precluded in any event by the contracting officer's determination of nonresponsibility. West responds that the Air Force has raised the issue of West's nonresponsibility in an effort to avoid having our Office review the bases for the protest cited above.

Our initial inquiry will be to examine the effect of the nonresponsibility determination since, if this determination stands, award to West would have been precluded and the other issues in West's protest would thereby be rendered moot.

Before award of a contract, the contracting officer must make an affirmative determination that the prospective contractor is responsible. ASPR § 1-904.1 (1976 ed.). If the information available to the contracting officer "does not indicate clearly that the prospective contractor is responsible," a determination of nonresponsibility is required. ASPR § 1-902 (1976 ed.). The evaluation of what constitutes a clear indication of responsibility is essentially a business judgment involving considerable discretion on the part of the contracting officer. See Sorbus Inc., B-183942, July 12, 1976, 76-2 CPD 31.

B-190173

Yardne Electric Corporation, 54 Comp. Gen. 509 (1974), 74-2 CPD 376; Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64. Moreover, we have long considered that the denial by the SBA of an offeror's request for a COC constitutes an affirmation of the contracting officer's determination of nonresponsibility. Air-O-Plastic Corporation, B-189932, September 15, 1977, 77-2 CPD 194; United States Crane Certification Bureau, Inc., B-188856, July 22, 1977, 77-2 CPD 43; Unitron Engineering Company, B-181350, August 20, 1974, 74-2 CPD 112. It is well settled that responsibility determinations should be based on information indicative of a bidder's position as close as possible to the date of award and we have been willing on occasion to recommend reassessment of a bidder's responsibility even after denial of a COC where new information has come to light which was not previously considered by the contracting officer or the SBA. Inflated Products Company, Incorporated, B-188319, May 25, 1977, 77-1 CPD 365; Precision Electronics Labs, B-186751, October 29, 1976, 76-2 CPD 369; Crawford Development and Manufacturing, B-188110, March 15, 1977, 77-1 CPD 193; Harper Enterprises, 53 Comp. Gen. 496 (1974), 74-1 CPD 31; 53 Comp. Gen. 344 (1973). However, where it has appeared that the bidder's new information has been considered by the agency and the original assessment of nonresponsibility was not changed, we have declined to consider the question on the merits absent bad faith or fraud. Kent Uniform Company, Inc., B-188931, July 25, 1977, 77-2 CPD 46; Inflated Products Company, Inc., B-189115, October 31, 1977, 77-2 CPD 334.

The record here discloses that a second preaward survey was conducted in response to West's new financial information and that this survey concluded that there was no material change in West's position since the initial determination of nonresponsibility. In our view, the agency's review of West's information and the conduct of a second survey constitute sufficient evidence of compliance with our decision in Inflated Products Company, Inc., B-188319, supra.

B-190173

West, however, has suggested that the Air Force raised the question of West's nonresponsibility in bad faith in an effort to avoid having a substantive review by this Office of West's assertion that the competitors were not treated equally on this procurement. We do not think that the record supports such a conclusion.

We note initially that contrary to West's assertions, the question of West's nonresponsibility was first raised on May 24, 1977, at the time of the initial determination of nonresponsibility and well in advance of West's protest to our Office. Secondly, the SBA affirmed the contracting officer's determination of nonresponsibility by denial of a COC. And, lastly, we note that West's allegations of unequal treatment are premised on speculations of supposed advantage enjoyed by Entron by virtue of its incumbency on another contract to furnish a similar item. In this regard, however, we have expressed the view that the Government is not required to equalize competition on a particular procurement by taking into consideration advantages accruing to individual competitors by reason of their particular circumstances. Boston Pneumatics, Inc., B-188275, June 9, 1977, 77-1 CPD 416; Field Maintenance Services Corporation; E-185339, May 28, 1976, 76-1 CPD 350; ENSEC Service Corp., B-184803, B-184804, B-184805, January 19, 1976, 76-1 CPD 34; 53 Comp. Gen. 86 (1973); 43 Comp. Gen. 60 (1963). We have held that such circumstances may include the award of other contracts or the benefit of experience gained under such contracts. Houston Films, Inc., B-184402, December 22, 1975, 75-2 CPD 404; Plasecki Aircraft Corporation, B-181913, June 27, 1975, 75-1 CPD 391.

In the circumstances before us here, we conclude that at the time of the initial determination of West's nonresponsibility there existed at best only the mere possibility of modifications affecting this procurement and we find no duty on the part of the agency to

B-190173

communicate such possibility to West. Furthermore, we view the SBA's affirmation of the contracting officer's determination of nonresponsibility as militating against West's assertion that the determination was arbitrary and capricious. Accordingly, since we find no impropriety in the agency's actions in this regard, we can ascertain no basis for a conclusion that the contracting officer acted in bad faith in determining West to be nonresponsible.

In view of the foregoing, we perceive no useful purpose to be served by substantive consideration of West's other bases for protest.

For these reasons, the protest is denied.

*R. J. K. Miller*  
Deputy Comptroller General  
of the United States